

This letter discusses tax on food supplements. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

August 27, 2007

Dear Xxxxx:

This letter is in response to your letter dated May 1, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please be advised that I represent ABC. ABC is a direct selling company that markets its products to Independent Business Owners (IBO's). Currently I am reviewing the sales tax status of their products.

The products are:

- Support Pack
- Energy Drink
- Bazi
- Hydrate
- Power Meal
- Build Formula
- Weight Management Snack
- Eat-Drink-Snack System
- Peak Performance System

I have attached information on all the products, including the supplemental nutritional facts.

Please advise if the products are exempt, qualifies for a reduced rate or is taxable in your state.

Contact me if you have any further questions at #.

DEPARTMENT'S RESPONSE

Please review the Department's regulation at 86 Ill. Adm. Code 130.310, regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see from the regulation, food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and that purports on the label to have medicinal qualities. Therefore, if vitamins, food supplements or meal replacement drink mixes are intended by the manufacturer for human use and purport on the label to have medicinal qualities, such items are considered to be drugs and are taxed at the low rate of tax.

Since not many vitamins, food supplements or meal replacement drink mixes are likely to make medicinal claims, such items would be considered to be food.

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate (6.25% State rate) on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax (1%) may be charged on the bulk or grocery type items if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

The Department generally relies on the plain meaning of the term "physically partitioned" as in separated or divided by a tangible barrier. An eat-in-area that is partially isolated from the generally sales area of a store by the arrangement of display cases, service counters, or stub walls would qualify as "physically partitioned."

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a). Food for immediate consumption is defined in the regulation as hot food and food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. See 86 Ill. Adm. Code 130.310(b)(6). Please note, however, that Section 130.310 regarding food is currently being reviewed and some changes to the regulation are expected.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk